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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/852,831	05/10/2001	Arnold M. Gutierrez	AUS920010325US1	5466
7590	03/05/2004		EXAMINER	
Robert V. Wilder Attorney at Law 4235 Kingsburg Drive Round Rock, TX 78681			KRAMER, JAMES A	
			ART UNIT	PAPER NUMBER
			3627	

DATE MAILED: 03/05/2004

Please find below and/or attached an Office communication concerning this application or proceeding.

<b>Office Action Summary</b>	<b>Application No.</b>	<b>Applicant(s)</b>	
	09/852,831	GUTIERREZ ET AL.	
<b>Examiner</b>	<b>Art Unit</b>		
James A. Kramer	3627	MW	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

### **Period for Reply**

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

## Status

1)  Responsive to communication(s) filed on \_\_\_\_.

2a)  This action is **FINAL**.                            2b)  This action is non-final.

3)  Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

## Disposition of Claims

4)  Claim(s) 1-26 is/are pending in the application.  
4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.  
5)  Claim(s) \_\_\_\_\_ is/are allowed.  
6)  Claim(s) 1-26 is/are rejected.  
7)  Claim(s) \_\_\_\_\_ is/are objected to.  
8)  Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

## Application Papers

9)  The specification is objected to by the Examiner.

10)  The drawing(s) filed on \_\_\_\_\_ is/are: a)  accepted or b)  objected to by the Examiner.

Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).

Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).

11)  The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

12)  Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).  
a)  All    b)  Some \* c)  None of:  
1.  Certified copies of the priority documents have been received.  
2.  Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.  
3.  Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

**Attachment(s)**

1)  Notice of References Cited (PTO-892)  
2)  Notice of Draftsperson's Patent Drawing Review (PTO-948)  
3)  Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)  
    Paper No(s)/Mail Date \_\_\_\_\_  
4)  Interview Summary (PTO-413)  
    Paper No(s)/Mail Date. \_\_\_\_\_.  
5)  Notice of Informal Patent Application (PTO-152)  
6)  Other: \_\_\_\_\_.

## DETAILED ACTION

### *Claim Rejections - 35 USC § 103*

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

Claims 1-26 are rejected under 35 U.S.C. 103(a) as being unpatentable over Alaia et al.

Alaia et al. teaches a supplier-bidding auction in which a buyer designates a predetermined maximum acceptable price (column 4; lines 4-7). The auction is conducted electronically between bidders at remote sites and a coordinator (column 3; lines 45-48) (enabling bidders to be connected to auction server through an interconnection network and receiving price bids from bidders for an item during an auction period).

Examiner notes that the dynamics of the supplier-bidding auction of Alaia et al. are identical to those of a regular buyer-bidding auction. Specifically, the buyer of Alaia et al. inputs the description of an item he/she would like to buy (same as a seller inputting the description of an item for sale) and suppliers submit price bids for the right to sell that item (same way buyers would submit price bids for the right to buy the item). In addition, as taught by Alaia et al. the buyer inputs a pre-determined maximum acceptable price, that bids are compared to in order to protect the buyer from unacceptable bids. This is the same as a reserve price, used to ensure the seller is protected from unacceptable bids.

Alaia et al. further teaches a flexible over time system for an auction. Examiner references Figure 11 and the related detailed description starting on column 12; line 49.

Specifically, Alaia et al. teaches receiving bids (510). Once a bid is received the system determines whether the current time is within a closing time trigger interval. For example if the closing time interval is 2 minutes, then at two minutes before the closing time the system will check to see whether a trigger bid has been made. If there are no trigger bids, then the auction closes. If a trigger bid has been received then the auction goes into overtime.

Alaia et al. does not teach determining if a bid is equal to or greater than a predetermined reserve price.

Alaia et al. does teach determining that an extension of auction period was authorized by seller if none of price bids was equal to or greater than said predetermined reserve price. In other words, Alaia et al. does not specifically teach the attribute of the trigger bid criteria being associated with the determining whether the bid exceeds the predetermined maximum acceptable price.

It would have been obvious to a person of ordinary skill in the art at the time the invention was made to modify the trigger bid criteria to include determining whether a bid has exceeded a pre-determined maximum acceptable price, as taught by Alaia et al. before deciding whether to close the auction or send it in to overtime, in order to make sure that the bid is acceptable to the seller.

#### *Response to Arguments*

Applicant's arguments filed 12/22/03 have been fully considered but they are not persuasive.

Applicant asserts that the dynamics of each type of auction are totally different with different operational characteristics, goals and results. Examiner disagrees. The dynamics of the

supplier-bidding auction of Alaia et al. are identical to those of a regular buyer-bidding auction. Specifically, the buyer of Alaia et al. inputs the description of an item he/she would like to buy (same as a seller inputting the description of an item for sale) and suppliers submit price bids for the right to sell that item (same way buyers would submit price bids for the right to buy the item). In addition, as taught by Alaia et al. the buyer inputs a pre-determined maximum acceptable price, that bids are compared to in order to protect the buyer from unacceptable bids. This is the same as a reserve price, used to ensure the seller is protected from unacceptable bids. As for the goals and results, the goal and result of both auctions is to find the fair market value of an item by matching a buyer and sell.

Applicant asserts that there is a break in the Alaia et al. acution. This is inaccurate. Alaia et al. teaches a pause function, but this totally separate from the concept of flexible overtime. In fact once a trigger bid is accepted, the system automatically extends the auction period. (Reference Figure 11).

Applicant asserts that there is no mention or even suggestion of anything that might even arguably correspond to a predetermined reserve price. Examiner disagrees. Alaia et al. teaches the buyer inputs a pre-determined maximum acceptable price, that bids are compared to in order to protect the buyer from unacceptable bids (column 4; lines 4-7). This is the same as a reserve price, used to ensure the seller is protected from unacceptable bids.

### ***Conclusion***

**THIS ACTION IS MADE FINAL.** Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of this final action.

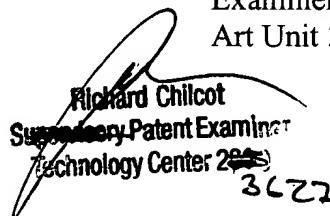
Any inquiry concerning this communication or earlier communications from the examiner should be directed to James A. Kramer whose telephone number is (703) 305-5241. The examiner can normally be reached on Monday - Friday (8AM - 5PM).

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Richard Chilcot can be reached on (703) 305-4716. The fax phone number for the organization where this application or proceeding is assigned is 703-872-9306.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

James A. Kramer  
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